ssm

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2819 OF 2007

IN

FIRST APPEAL (ST) NO. 30897 OF 1998

M/s. Prabhakar Engineers Pvt.Ltd. ...Applicant.

Vs.

Employees State Insurance Corp. ...Respondents.

Mr. S.R.Nargolkar for the applicant.

Mr. P.M. Palshikar for the respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 4th September, 2007

P.C.

1. By order dated 4th February, 2004 the Additional Registrar had dismissed the first appeal which was on stamp number, as there was an application for condonation of delay was under objection. The learned counsel appearing for the applicant pointed out that the said application was filed alongwith an affidavit of one Mr. P.V.Joshi which was endorsed by Mr. P.K.Sonawane dated 6th September, 1998. In view of the fact that as there was affidavit already filed alongwith this application, there should not have been the impugned order to dismiss the appeal alongwith the application for condonation of 7 day’s delay in filing

the present appeal.

2. The respondent when received the notice of recovery on 29th May, 2007, the present application for restoration has been filed on 31st May, 2007. The present application in this background is within limitation from the date of knowledge. As noted, party cannot be compelled to suffer because of the impugned order, as there was no such objection ought to have been raised as the affidavit was part of the record.

3. Taking all this into account, I am of the view that, there is a sufficient cause shown by the applicant to grant the application. In view of this, the present application is allowed in terms of prayer clauses (a) and (b).

4. Appeal be placed alongwith Civil application for condonation of delay in next week.

(ANOOP V. MOHTA, J.)